BRIEF FOR THE EMPLOYEES' REPRESENTATIVE COMMITTEE OF THE NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 767.

NATIONAL LABOR RELATIONS BOARD

vs.

NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

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Representative Committee.

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INDEX

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THE QUESTION PRESENTED.

Whether or not the Employees' Representative Committee is capable of representing the employees in collective bargaining, free from domination or interference by the employer.

STATEMENT.

The Employees' Representation Plan was put into effect in the Newport News Shipbuilding and Dry Dock Company in 1927.

Certain employees conferred with the Management of the Newport News Shipbuilding and Dry Dock Company with respect to instituting this plan. It was agreed that if the majority of the employees were favorable to the plan that the management would recognize it. By a vote of 2,430 for the plan to 204 against the plan it was adopted.

Under the plan, the employees elected free from interference, domination or molestation by the employer their own representatives, and the employer selected a similar number of management representatives.

These two groups met and discussed and negotiated matters affecting the terms and conditions of their employment and the problems of their work.

With minor changes this plan remained in effect until the constitutionality of the National Labor Relations Act had been determined.

When the propriety of the general joint committee was raised it was decided to eliminate the general joint committee and to discontinue the meetings between the employes' representative and employer's representatives.

It has never been contended, nor has any evidence been introduced in this case to show that the elected employees' representatives were not of the employees' own choosing, and it was agreed and stipulated that the company has never interfered with, discouraged, encouraged or in any way prevented or sought to prevent the selection of the employees' of representatives of their own choosing.

On June 15, 1937, 5,718 out of 6,300 eligible voters at work on that day, elected 43 representatives on the Employees" Representative Committee to serv from July 1st, 1937, to June 30, 1938.

On June 7, 1938, after the employees had been notified of the recommendation made by the trial examiner on March 9, 1938, that the Employees' Representative Committee be disestablished, a referendum with reference to the continuance of the plan was held. 3,455 workers voted to continue the plan, 562 voted to discontinue the plan, and 51 ballots were void.

On June 14, 1938, the annual election was held, 4,233 out of 4,889 men present at work elected 43 representatives to serve from July 1, 1938, to June 30, 1932. 42 votes were thrown out.

The uncontradicted evidence also showed that there had never been any action on the part of the management or by any officers or persons in a supervisory capacity in the Shipyard, to discourage membership in any union or to encourage membership in any union.

And that for more than forty-three years prior to the hearing there has been no labor dispute or disturbance that has interfered with the operation of the yard.

THE BOARD'S CONTENTION.

The National Labor Relations Board contends: One, because the plan of representation of employees was discussed with the employer before it was put into effect back in 1927, when it was not unlawful to do this, it is a company sponsored organization from its inception and cannot be corrected or amended to make it qualify under the National Labor Relations Act. And two, that by reason of Articles VI and IX of the plan of representation of employees, the organization is still objectionable. Even though these objectionable articles have since been eliminated.

For these reasons the Board contends that the affirmative action calling for disestablishment of the Employees' Representative Committee ordered by the Board should not have been stricken out by the Circuit Court of Appeals.

ARGUMENT.

The language of the Court below best states the position of the Employees' Representative Committee when it said, "The purpose of the Act will not be served by destroying an organization that is without doubt the chosen representative of the great majority of the employees, even though it may be thought that their decision to restrict their spokesman to American-born fellow workmen is unwise".*

The Court stated further: "But it was also important to take cognizance of the undoubted service that the organization had previously rendered to men and management alike, and of the insistance of the men upon the preservation of their organization, and to vote their sincere desire to eliminate in form as well as in substance every opportunity of the employer to a future share in the administration. That has now been accomplished and there is no longer any basis for the conclusion that the present plan is incapable of serving as a sincere representative of the employees for the purpose of collective bargaining."

"The National Labor Relations Act was designed to deal with the actualities of industrial life in this country, and to promote peace in relations between employer and employees by securing to employees the right, too frequently denied in the past, to organize and bargain collectively, with complete freedom and independence, through representatives of their own choosing." It is not questioned but that the employees have had a free hand in the selection of their representatives.

If they want to elect as their representatives only fellow employees they have a perfect right to do this, and if they want to change their by-laws and rules to elect

*The plan has been amended so that the requirement that a representative be an American born citizen has been eliminated by striking from Section 1, Article 3 of the plan, "and who is an American-born citizen."

as their representatives outside persons they can easily do this by a change in the by-laws of their organization without protest or interference of any kind from the employer.

While the National Labor Relations Board contended that Article VI and Article IX of the plan restricted the independence of the Committee in its capacity as a representative of the men, it was thoroughly understood by the Shipbuilding Company and the Employees' Representative Committee that the provisions of Article VI and Article IX were to apply to matters pertaining to the rights of the Company under the plan, and in nowise applied or were intended to effect the independence of the Committee.

Because the National Labor Relations Board contended that while this might be so as to past actions something different might be tried in the future, Articles VI and IX were amended by the Employees' Representative Committee to overcome the objection.

We have then an employees' representative committee that has been fairly elected without interference or molestation by the employer, by an overwhelming majority of the employees, to represent them as a collective bargaining agency in negotiations with the employer.

The question then arises, whether this Organization should be disestablished because of some insignificant assistance given it by the employer, such as the distribution of copies of the minutes through the company's mailing system, and permitting copies of the minutes to be typed on the company time?

It is submitted that the cease and desist order eliminates this inconsequential aid that has been given. To cause the disestablishment of this Organization is unreasonable and would defeat the very purpose of the Act.

The Board takes the position that where it has found that an employer has dominated and interfered with the administration of a labor organization of its

employees that it has sole and unlimited discretion as to what affirmative relief it shall order.

In *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, No. 436, the Court said: "The authority to require affirmative action to 'effectuate the policies' of the Act is broad but is not unlimited. It has the essential limitations which inhere in the very policies of the Act which the Board invokes".

In *Consolidated Edison Co.* v. *National Labor Relations Board*, Nos. 19, 25, we find: "The employers' practices, which were complained of, could be stopped without imperiling the interests of those who for all that appears had exercised freely their right of choice".

In *National Labor Relations Board* v. *Pacific Greyhound Lines, Inc., et als.*, 303 U. S. 261, 270, we find: "We may assume that there are situations in which the Board would not be warranted in concluding that there was any occasion for withdrawal of employer recognition of an existing union before an election by employees under section 9 (c), 29 U. S. C. A. 159 (c), even though it had ordered the employer to cease unfair labor practices".

It is clear from these cases that this court recognizes that the National Labor Relations Board does not have unlimited authority in ordering affirmative relief.

No election was called for by the National Labor Relations Board to determine whether the majority of the employees desired the Employees' Representative Committee to continue to be their bargaining agency, although the Employees' Representative Committee themselves called for a referendum, after the report of the Trial Examiner of the National Labor Relations Board had been published. The result of that referendum was a vote of 3,455 for with 562 against a continuation of the Plan.

It is not contended that there is another labor organization or that there are other employees' represen-

tatives to look after the interest of the men. To disestablish this Employees' Representative Committee, overwhelmingly elected by the employees of the Newport News Shipbuilding and Dry Dock Company, leaves them without a collective bargaining agency.

It might be that they could join up with some national labor organization, or they might go on without representatives. But it is not the purpose of the Act to force the employees into any particular kind of a labor organization, nor is it the purpose of the act to deprive them of their honestly, freely chosen representatives.

In conclusion it is submitted that the facts in this case are peculiar to this particular case and that the review of this case will not aid the Board in the disposition of other cases. The action to be taken by the Board in each case is dependent upon the facts in that particular case.

CONCLUSION.

It is respectfully submitted that the petition for a writ of *certiorari* to review the judgment of the Circuit Court of Appeals for the Fourth Circuit should be denied.

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